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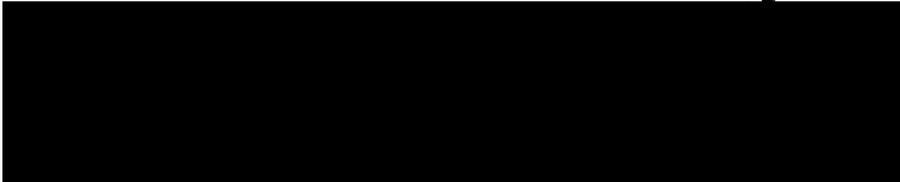


U.S. Citizenship
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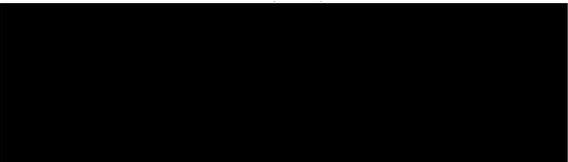


FILE: SRC 04 081 53036 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the instant nonimmigrant visa petition in a decision dated May 18, 2004.¹ The petitioner timely appealed the decision to the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a health care provider, seeking O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a transplant surgeon.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in medical science as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

¹ The petitioner previously filed a Form I-129 petition on the beneficiary's behalf that was denied. In March 2004, an appeal was dismissed. In July 2004, the AAO granted the petitioner's motion to reopen and reconsider its decision, and affirmed the prior decisions of the director and AAO. (SRC 04 028 50326).

- (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
- (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
- (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
- (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The beneficiary in this matter is a 42-year old citizen of Israel and Romania. The record reflects that he received his medical degree in 1987 from the Carol Davilla University, Bucharest, Romania. He completed an internship in internal medicine at the Bucharest University Hospital. He then completed a three-year residency program in surgery at the Sheba Medical Center, Tel Hashomer, Israel. He completed a fellowship program in the department of liver transplantation at the Mayo Clinic, Rochester, Minnesota. He most recently completed a fellowship in transplant surgery/islet cell transplantation at the Baylor University Medical Center, Dallas, Texas. The record reflects that he was last admitted to the United States on June 26, 2000, in J-1 classification, as an exchange visitor subject to the two-year foreign residency requirement.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number one, counsel for the petitioner asserts that the beneficiary has received two nationally or internationally recognized prizes or awards for excellence: the Israeli Ministry of Health Award for Excellence in Service and the Baylor University Medical Center's Seeger Grant.

The petitioner submitted a letter from [REDACTED] Washington Hospital Center, Washington D.C., that states he trained at the Chaim Sheba Medical Center and is "well aware of the existence of the Ministry of Health Award for Excellence in Service [REDACTED] further stated that the "selection process is very competitive" and "award winners are selected each year from more than 1000 physicians, based on peer recommendations."

The petitioner submitted a letter written by [REDACTED] Professor of Surgery and Deputy Director of the Chaim Sheba Medical Center, Tel Hashomer, Israel that states:

The Ministry of Health confers this award each year to employees in the public health service who have excelled in the line of duty for a minimum of two years.

The nominees are evaluated by a multi-disciplinary committee of senior staff members, and the award is in recognition of both professional and personal performance and dedication.

The competition is open to all of approximately 1500 employees at our medical center, and the fact that it was awarded to [REDACTED] was indeed a sign of the high esteem in which he was held by superiors and peers, the members of the medical team, and by the patients and their families.

It is noted that there is a possible discrepancy between the letters of [REDACTED] indicated that this competition is open to "all of approximately 1500 employees at our medical center;" whereas Dr. Milko stated that award winners are selected from 1000 physicians. In any event, the evidence clearly indicates that the award is an institutional award, limited to employees at one medical center and as such, is not a nationally or internationally recognized award for excellence in the field of endeavor.

The beneficiary received a Seeger Grant in the amount of \$75,000 for his work in pancreatic islet cell transplantation from Baylor University, an affiliate of the petitioner. On appeal, counsel for the petitioner asserts that the relevant regulation does not specifically require that the award given only be an award to honor or recognize past achievement; "there may be dual intent," i.e., funding for a meritorious proposal and to honor an individual's reputation and past achievements.

Counsel's argument is not persuasive. It is clear that the committee that reviews grant proposals is primarily concerned with the merit of each proposal. The AAO has consistently found that grants are not awards for excellence within the meaning of the regulation. The beneficiary does not meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

For criterion number two, the beneficiary is a member of the American Society of Transplantation (AST), the Texas Medical Association (TMA), the American Society of Transplant Surgeons (ASTS), and the Mayo Medical Alumni Association.

On appeal, counsel for the petitioner asserts that the beneficiary's membership in ASTS and the Mayo Medical Alumni Association satisfies this criterion.

Counsel asserts that membership in ASTS satisfies this criterion because membership is limited to those who are actively engaged in or show a strong academic or research commitment to transplantation. Counsel further asserts that prospective members must be sponsored by at least three members, have studied at an ASTS approved institution and have at least three publications in the transplantation literature. Finally, an application has to be approved by the ASTS membership committee, the ASTS council and by a two-thirds vote of the general membership. Although the petitioner has shown that the requisites for membership are rigorous, the

petitioner has not established that the ASTS is an association that requires *outstanding achievements* of their members, as judged by recognized national or international experts in the discipline.

Counsel asserts that membership in the Mayo Medical Alumni Association satisfies this criterion because "being accepted into the Mayo fellowship in the first place is extraordinary." Although a Mayo fellowship is competitive, the petitioner has not established that acceptance into a Mayo fellowship program is an extraordinary achievement or that membership in the Mayo Medical Alumni Association satisfies this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date and author of such published material, and any necessary translations.

On appeal, counsel for the petitioner indicates that the petitioner did not provide evidence relating to criterion number three.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

No evidence was submitted in relation to criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, counsel for the petitioner asserts that the beneficiary has made important original scientific contributions of major significant in three fields: the MELD score, pancreatic islet cell transplantation and the international liver transplant tumor registry.

Counsel for the petitioner asserts that "the MELD score work of [the beneficiary] can be considered the most important contribution to the success of liver transplantation. This is evidence [sic] by the fact that he has received national and international recognition for his work as seen in the following [10] citations." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Ten citations to a person's work, in and of themselves, are not evidence of the originality or significance of an individual's contribution. It is the nature of scientific research to build upon the work of other researchers, and citations to other scientists are common in the field. While large numbers of citations by one's peers may reflect the communities' reaction to the research as original and of major significance, ten citations are not sufficient evidence of the major impact this work has had on the field.

Counsel further asserts that the beneficiary made an original scientific contribution of major significance in his field because he was involved in the maintenance of a unique international liver transplant tumor registry. Counsel cites a statement from the founder and manager of the tumor registry [REDACTED] as supporting evidence. [REDACTED] wrote: "[the beneficiary] is involved in the maintenance of the International Liver Transplant Tumor Registry, a multi-center database involving 57 transplant centers in 10 countries across four continents. This is the only registry of its kind in the world. Currently the registry manages data on 1244 patients."

The petitioner submitted seven testimonials. [REDACTED] Surgical Director of Transplantation at Baylor All Saints Medical Center, wrote that the beneficiary has made a "significant contribution to our understanding of the

MELD scoring system for liver allocation.” Dr. Gregory Gores, Medical Director of Liver Transplantation at Mayo Clinic, wrote that the beneficiary’s MELD score data was unique. Dr. Asher Hirshberg, Director of Vascular Surgery and Medical Director of the Noninvasive Vascular Laboratory at the Ben Taub General Hospital, wrote, “[the beneficiary] made a major contribution to the field of liver transplantation by being among the first researchers to validate the new MELD scoring system.” Dr. Camillo Ricordi Chief of the Division of Cellular Transplantation, Department of Surgery, University of Miami School of Medicine, wrote:

The Baylor Regional Transplant Institute . . . is developing an islet cell transplant program based on their existing infrastructure as one of the busiest transplant centers in the United States. [The beneficiary] is one of the very few medical professionals who have outstanding clinical skills as a transplant surgeon, combined with a basic research background, and the leadership capability to run such a program in a busy university hospital.

The petitioner has failed to establish that the beneficiary has made an original contribution of major significance with his work validating the MELD scoring system, or in pancreatic islet cell transplantation. The evidence fails to demonstrate how the beneficiary has made an original contribution of major significance by virtue of his involvement in the maintenance of the International Liver Transplant Tumor Registry. While the work may be important to the field, the petitioner failed to describe what maintenance of the registry entails and why this is an original contribution of major significance.

In review, the evidence fails to show that beneficiary satisfies this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

The petitioner established that the beneficiary satisfies this criterion, but it is just one criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

On appeal, counsel for the petitioner asserts that the beneficiary’s employment at Baylor has been critical and essential, in part, because the beneficiary was the principal investigator for 12 research projects and because he possesses the expertise necessary in the management of patient care for the success of the petitioner’s islet cell program.

The regulation clearly requires evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. The petitioner states that the beneficiary has played a critical role at Baylor’s islet cell laboratory; therefore, to qualify, it must establish that the islet cell laboratory is a distinguished department in its own right. The petitioner failed to establish that Baylor’s islet cell laboratory possesses a distinguished reputation in its own right.

The petitioner further asserts that the beneficiary played a critical role at Mayo Clinic because he conducted research, published the results of his research on the impact of the MELD score on survival after transplantation. While the beneficiary has published his findings relative to the MELD score, the record does not show that his research is considered of “major significance” in the field. According to the evidence submitted, the MELD score was implemented nationwide in 2002. In the absence of corroborating evidence in the form of mass media, the evidence is insufficient to establish that the beneficiary can be credited for playing a key role in the nationwide acceptance of the MELD system.

The beneficiary does not satisfy this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

For criterion number eight, counsel asserts that the proffered salary of \$170,000 "exceeds [the] average salary for transplant surgeons in Texas or anywhere else in the United States."

As corroborating evidence, the petitioner submitted a letter from the petitioning organization's vice president, which stated, "it is my experience that this salary far exceeds the average salary for a surgeon." The petitioner also submitted a printout from the Department of Labor's OES-SOC Wage Library evidencing the prevailing wage in several states and a printout from the National Institutes of Health, which states that the annual median income for surgeons is approximately \$145,600 annually."

The AAO has consistently determined that this criterion must be indicative of national or international acclaim; hence, the petitioner should have submitted wage survey information for all transplant surgeons on a nationwide basis. To evaluate whether the salary is high, AAO needs to compare it to the median and highest wages offered nationwide to transplant surgeons. The petitioner has not established that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.